Argued Dec. 16, 1879.
11-247
Mr Justice Field
1879
Did not hear
Brady

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~337.~~ 108

GEORGE WATT, APPELLANT,

vs.

P. H. STARKE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED FEBRUARY 23, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 337.

GEORGE WATT, APPELLANT,

vs.

P. H. STARKE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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1 Pleas before the circuit court of the United States for the eastern district of Virginia at Richmond in said district on Saturday the 28th day of October, 1876.

Present, Hon. H. L. Bond, judge presiding.

GEORGE WATT, COMPLAINANT, *vs.* P. H. STARKE, DEFENDANT. } Cause No. 145. In chancery.

Be it remembered that heretofore, to wit, on the 8th day of August, 1870, came the complainant by his attorneys and filed in the clerk's office of said court, his bill of complaint against the defendant. Said bill of complaint together with the exhibits therewith filed is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Virginia:

Your orator, George Watt, a resident in the city of Richmond and a citizen of the State of Virginia, brings this, his bill against P.
2 H. Starke, who is also a resident of said city, and a citizen of said State, and thereupon your orator complains and says that before the making of the letters patent next hereinafter mentioned he had invented a certain improvement in ploughs which your orator then believed, and still believes to be of great public utility.

That your orator was the true and first inventor thereof, and that said improvement had not been known or used before the invention thereof by your orator.

That your orator, desiring to obtain an exclusive property in said invention and improvement, and a patent therefor, did before the making of the letters patent aforesaid, make application to the Commissioner of Patents in writing, expressing such desire, and did deliver as the law directs a specification or written description of his invention afore-
3 said, and of the manner and process of making, constructing, and using the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art to which such invention appertains, or with which it is most nearly connected, to make, construct, and use the same; and fully explaining the principle of the said invention, and the mode, or several modes, in which he contemplated the application of that principle, or character by which it is distinguished from other inventions; and that he particularly specified and pointed out the part, improvement, and combination which he claims as his own invention.

That he accompanied the said description or specification with drawings and written references, which description and drawings and references were duly signed by him and attested by two witnesses and filed in the Patent Office, as by the said description and drawings and references, or a copy or copies thereof duly authenticated and annexed
4 to the said letters patent as a part thereof, will more fully and at large appear; which said letters patent with the said description and drawings and references, or a true and duly authenticated copy or copies thereof, are herewith exhibited and marked A, and which your orator prays may be taken and regarded as a part of this bill; and for greater certainty your orator craves leave to refer thereto or to such other copy or copies of the said letters patent, and description and drawings and references as can be received in evidence when the same are

produced to the court, to the same extent as if they had been herewith set forth fully and verbatim.

That your orator also furnished models or a model as the law prescribes of the said invention and improvement of a convenient size to set forth advantageously its several parts, and made oath according to law that he did verily believe that he was the first inventor of said improvement, and that he did not know or believe that the same was ever be-
5 fore known or used; and that he was a citizen of the United States, and he further shows that he paid into the Treasury of the United States the sum of thirty dollars.

Your orator further shows that afterwards and within the period allowed by law for that purpose, to wit, on the ninth day of December, in the year of our Lord one thousand eight hundred and fifty-six (December 9th, 1856), he obtained a patent for said improvement and invention by letters patent granted by the then Commissioner of Patents, and issued in the name of the United States of America, under the seal of the Patent Office and signed by the then Secretary of the Interior and the then Commissioner of Patents, and bearing date the same day and year last aforesaid, by which said letters patent there was granted to your orator, his heirs, administrators, or assigns, for the term of fourteen years from the ninth day of December, one thousand eight hundred and fifty-six, the full and exclusive right and liberty of mak-
6 ing, constructing, and using, and vending to others to be used, the said improvement, as will more fully and at large appear by reference to said letters patent or a duly authenticated copy thereof herewith exhibited and marked A, as aforesaid, and to which for greater certainty your orator craves leave to refer.

Your orator further shows that before the making of the letters patent next hereinafter mentioned, he had invented a certain other improvement in ploughs which your orator then believed and still believes to be of great public utility.

That your orator was the true and first inventor thereof, and that the same improvement had not been known or used by others before the invention thereof by your orator; and was not in public use or on sale with the consent and allowance of your orator, at the time of his application as hereinafter mentioned for a patent therefor.

That your orator desiring to obtain the exclusive property in the said invention and improvement last aforesaid, and a patent therefor
7 did, before the making of the letters patent next hereinafter mentioned, make application in writing to the then Commissioner of Patents, and deliver, as the law directs, a description of his said invention and improvement last mentioned, and did, in all other respects, comply with the provisions of the act or acts of Congress in such case made and provided, and thereupon afterwards, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and fifty eight (February 9th, 1858,) letters patent were issued to him for said improvement and invention last aforesaid; which said last mentioned letters patent were afterwards in pursuance of the statute in such case made and provided, surrendered by your orator, and cancelled, and it was ordered by the proper authorities that new letters patent should issue to him on an amended specification.

That your orator afterwards delivered, according to law, an amended specification or written description of his said last mentioned in-
8 vention and improvement, and of the manner and process of making, constructing and using the same in such full, clear and exact terms, avoiding all unnecessary prolixity as to enable any person

skilled in the art to which said invention and improvement appertains, or with which it is most nearly connected, to make, construct and use the same; and fully explaining the principle of the said last mentioned invention and the mode or several modes in which he contemplated the application of that principle or character by which it is distinguished from other inventions; and that he particularly specified and pointed out, that part, improvement, and combination which he claimed as his own invention.

That the said amended specification was accompanied with drawings and written references; which description, and drawings, and references were signed by your orator and signed by two witnesses, and filed in the Patent Office according to law, as by the said description, and drawings, and references last aforesaid, or a copy or copies
9 thereof, duly authenticated and annexed to said letters patent last aforesaid as a part thereof, will more fully and at large appear, which said letters patent last aforesaid, with the said descriptions and drawings and references last aforesaid, or a true and duly authenticated copy thereof are herewith exhibited marked B, and which your orator prays may be taken and considered as a part of this bill, and for greater certainty your orator craves leave to refer thereto, or to such copy or copies of them as can be received in evidence when the same are produced to the court to the same extent, as if they had been herein set forth fully and verbatim.

That your orator furnished a model or models of said invention last mentioned of convenient size to set forth advantageously its several parts; and made oath, according to law, that he did verily believe that he was the first inventor of the said improvement last aforesaid, and that he did not know or believe, that the same was ever before known or used, and that he was a citizen of the United States, and your
10 orator further shows that he paid into the Treasury of the United States the sum of thirty dollars as the law required, and the further sum of fifteen dollars.

That afterwards and within the period allowed by law, to wit, on the second day of August, in the year of our Lord one thousand eight hundred and fifty-nine (August 2nd, 1859), he obtained and received a new patent for said invention, by letters-patent, issued in the name of the United States of America under the seal of the Patent Office, and signed by the then Secretary of the Interior, and the then acting Commissioner of Patents, and bearing date the same day and year last aforesaid, by which said letters-patent was granted to your orator, the said George Watt, his heirs, administrators or assigns, for the term of fourteen years from the ninth day of February, one thousand eight hundred and fifty-eight (February 9th, 1858), the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention and improvement, as will more fully and at large
11 appear by reference to the said new or re-issued letters-patent, which, or a copy of which duly authenticated are herewith exhibited marked B as aforesaid; and to which for greater certainty your orator craves leave to refer.

Your orator further shows that, before the making of the letters patent next hereinafter mentioned, he had invented a certain other improvement in ploughs which he believed and still believes to be of great public utility. That your orator was the true and first inventor thereof, and that the same invention had not before been, and was not at the time of the invention of said improvement by your orator, known or used by others; and was not in public use or on sale, with the consent

or allowance of your orator, at the time of his application for a patent therefor.

That your orator desiring to obtain the exclusive property in said invention and improvement, and a patent therefor, did, before the
12 making of the letters patent next hereinafter mentioned, make application in writing to the then Commissioner of Patents expressing such desire, and did deliver, in pursuance of the provisions of the statute in such case made and provided, a specification or written description of his invention and improvement last aforesaid, and of the manner and form and process of making, constructing, and using the same, and furnish a model or models of said invention and improvement, according to law, and paid into the Treasury the sum prescribed by law, and did in all other respects comply with the preliminary conditions required by law for obtaining a patent for said invention and improvement last aforesaid; and thereupon afterwards, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, (November 26th, 1867,) letters patent were issued to him for said improvement, in the name of the United States of America and under the seal of the Patent Office, and bearing
13 date the same day and year last aforesaid; which said letters patent were afterwards, and before the expiration of the term for which they were granted, surrendered by your orator, in the manner allowed by law, and cancelled; and it was thereupon ordered by the proper authorities that new letters patent should issue to your orator, for said invention and improvement, upon an amended specification.

That your orator afterwards delivered, according to law, an amended specification or written description of his said last mentioned invention and improvement, and of the manner and process of making, constructing, and using the same, in such full, clear and exact terms, avoiding all unnecessary prolixity, as to enable any person skilled in the art to which said invention and improvement appertaines, or with which it is most nearly connected, to make, construct and use the same, and fully explaining the principle of the said last mentioned invention, and the mode or modes in which he contemplated the application of that
14 principle or character by which it is distinguished from other inventions; and that he particularly specified or pointed out that part, improvement, and combination which he claimed as his own invention.

That the said amended specification and description last aforesaid was accompanied, as the original specification had been, with drawings and references in writing; which description and drawings and references were signed by your orator and by two witnesses, and filed in the Patent Office, according to law, as by the said description and drawings and references last mentioned, or a duly authenticated copy or copies of them, annexed to the letters patent next hereinafter mentioned as a part thereof, will more fully and at large appear; which said letters patent last aforesaid, or a true and duly authenticated copy of them, marked C, are herewith exhibited, and which your orator prays may be taken and considered as a part of this bill; and for greater
15 certainty your orator craves leave to refer thereto, or to such copy or copies of them as can be received in evidence, when the same are produced to the court, to the same extent as if they had been herein fully and verbatim set forth.

That your orator furnished a model or models of said invention last mentioned, of convenient size, to set forth advantageously its several parts, and made oath according to law that he did verily believe that

he was the first inventor of the improvement last aforesaid, and that he did not know or believe that the same was ever known or used before his invention thereof, and that he was a citizen of the United States, and your orator shows that he paid into the Treasury of the United States the further sum of thirty dollars.

That afterwards and within the period allowed by law, to wit, on the seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, (August 17th, 1869,) your orator obtained
16 and received a new patent for said last mentioned invention, by letters patent granted by the Commissioner of Patents or other proper officer, and issued in the name of the United States of America, under the seal of the Patent Office, and signed by the then Secretary of the Interior and the then Acting Commissioner of Patents, and bearing date the same day and year last aforesaid, by which said letters patent last mentioned there was granted to your orator, the said George Watt, his executors, administrators, or assigns, for the term of seventeen years from the said twenty-sixth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, (November 26th, 1867,) the full and exclusive right and liberty of making, using, and vending to others to be used, the improvements last aforesaid; as will more fully and at large appear by reference to said letters patent
17 last aforesaid, or a duly authenticated copy thereof, herewith exhibited, and marked C, as aforesaid, and to which your orator for greater certainty craves leave to refer.

Your orator further shows, that after the said several letters-patent were made and granted as aforesaid, the said inventions were used and put in practice by your orator, or by persons to whom he had sold ploughs or other articles made according to the principles of said invention, and each of them; and has vended and sold ploughs and articles made according to each of said several inventions, from the time of the making of said letters patent or soon afterwards, until the present time, and has made profit thereby, and hoped that he would have continued in the uninterrupted enjoyment of said patent-rights and privileges so granted to him as aforesaid during the residue of the term or terms for which they were granted.

18 But now so it is, may it please your honors, that the said , the defendant in this suit, after the making of said letters-patent and each of them, and within the terms mentioned and granted by said patents, wrongfully and injuriously, and without the leave, license, consent or agreement of your orator on divers days and times since the making of each of said several letters-patent, and continually until the present time, has worked, used, and put in practice, or vended to others to be worked, used, and put in practice, and has made and constructed, or caused to be made and constructed, and is now engaged in making and constructing or causing to be made and constructed numbers of ploughs and other articles which are intended to imitate and resemble, and which do in fact imitate and resemble the said inventions and improvements made by your orator, and which are made according to the principles of the said inventions of your
19 orator, and in breach and violation of said patents or letters-patent, and each and every one of them, and of the said sole privileges granted thereby to your orator as aforesaid; and though your orator, or some person or persons acting for him, and by his authority, has requested the said defendant to desist from such proceedings, yet, the said defendant has hitherto refused and still refuses to do so, all which

actings and doings are contrary to equity and good conscience, and can be relieved in a court of equity alone.

To the end therefore that the said defendant may show, if he can, why your orator should not have the relief hereby prayed; and may on oath, and to the best of his knowledge, remembrance, information, and belief, full, true, and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were repeated, and he particularly interrogated thereto, and especially that he may answer the following interrogatories and set forth:

20 1st. Whether your orator is not the inventor of the several improvements in ploughs hereinbefore mentioned, and which he claims to have invented; and if not, who is?

2d. Whether said inventions or improvements are not useful.

3d. Whether said inventions or improvements were not new at the time when the said patents therefor were granted; and if not, how is the contrary shown?

4th. Whether patents such as are above referred to were not granted to your orator, and whether said patents and specifications are not valid; and if they are not valid, why are they not so?

5th. Whether your orator, or some other person or persons, as his agent or agents, or in his behalf and for his benefit, has not from the date of each of said patents or from some other time and what time, used and put in practice, and made and constructed, or caused to be made and constructed, and vended and sold, or caused to be

21 vended and sold, said inventions and improvements, or ploughs and other articles made and constructed according to the principles of said inventions and improvements, or some parts thereof; and whether your orator, or some person or persons for him are not now employed or engaged in making ploughs and other articles according to the principles of said improvements and inventions, and in vending such articles.

6th. Whether said defendant, or some other person or persons for him and in his behalf, and for his benefit, or as his agent or agents, have not, since the making of the said several letters-patent, and during the terms therein granted, made and constructed and vended and sold ploughs and other articles made to imitate and resemble, and which do in fact imitate and resemble said inventions and improvements of your orator, and which are made and constructed according to the principles of the said inventions of your orator, or some one of them, or some

22 part of some one of them; and whether he, the said defendant, has not made and received profits thereby, and hindered or prevented your orator from receiving such gains and profits.

7th Whether said defendant, or his agent or agents, or some person or persons employed by him for that purpose, have not since the dates of said letters patent and within the terms granted by them, made and constructed, or vended and sold to others without the leave or license of this complainant, or any authority from him, or any agreement with him, plows or other articles or things intended to resemble or which do in fact resemble, in material points, said inventions and improvements and each one of them, or some part or parts of some one of them or each one of them, and whether said ploughs or other articles or things, so made as last aforesaid by said defendant or others for him, were not made according to and by means of said inventions of your orator,

23 or some one of them, or some part of some one of them, or according to the principles of said inventions of your orator, or some one of them, or some part of some one of them; and what number or

about what number of such ploughs or other articles he has made or caused to be made, or vended or caused to be vended and sold, to the best of his information and belief.

8th. Whether by making and constructing or vending such ploughs or other articles aforesaid, he, the said defendant, has not made large gains and profits, and to what amount or about what amount.

9th. Whether he or some person or persons for him have not now on hand a number of such ploughs or other articles as aforesaid, and how many or about what number and of what value or about what value.

10th. Whether he has not in the ways or by the means aforesaid infringed said patents or some one of them, or some part of some one of them, and what part.

24 11th. Whether said defendant is not now infringing and violating, or has not recently been engaged in infringing and violating, said letters patent; and, if so, how he justifies himself for so doing.

12th. Whether in consequence of such infringement your orator has not sustained great loss.

14th. Whether your orator or some one for him has not requested said defendant to desist from said proceedings, and whether he has not refused to do so.

And that said defendant may be decreed to account *account*, and pay all such gains and profits as may have accrued to or been received by him, or any one for him, or in his behalf, by making or vending said inventions or any one of them, or ploughs or other articles resembling or imitating said inventions or improvements, or any one of them, or

25 any part of any one of them; and that the said defendant and his agents, servant, and workmen may be restrained and enjoined by the order and injunction of this honorable court from directly or indirectly making, using, or vending said inventions, or any one of them, or any part of any one of them, and for such other and further relief as to your honors may seem meet, and as may be agre'able to equity and good cons'ience: May it please your honors to grant an order or writ of injunction, restraining and enjoining said defendant and his agents, servants, and workmen from making, using, or vending to others said invention or inventions, during the term or terms of said inventions, or any one of them, or any part of any one of them, and from making, using, or vending to others said inventions and improvements, or any one of

26 them, or any part of any one of them, and from making or vending any ploughs or other articles or things made in such a like manner or on the same principles as the invention or inventions of your orator in said letters patent mentioned, or in any wise imitating or resembling said inventions or any one of them, or any part of any one of them, until the defendant shall answer this bill, or until your honors shall make a further order to the contrary; and also a writ of subpœna to be directed to the said P. H. Starke, defendant as aforesaid, commanding him to appear, &c.

GEORGE WATT.

JAS. D. HALYBURTON,
JOHN A. MEREDITH,
P. Q.

George Watt, the complainant in the above bill, maketh oath and saith that the statements contained in said bill so far as they depend upon his own knowledge are true, and so far as they depend upon the knowledge of others he believes them to be true.

Sworn and subscribed before me this day of .

27 C.

No. 3609. Reissue.

The United States of America to all to whom these letters patent shall come:

Whereas George Watt, of Richmond, Virginia, has alleged that he has invented a new and useful improvement in plows (for which letters patent were issued to him dated November 26, 1867, which letters having been surrendered by him, the same have been cancelled, and new letters ordered to issue to him on an amended specification), and has made affirmation that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are therefore to grant to the said George Watt, his
28 executors, administrators, or assigns, for the term of seventeen years, from the twenty-sixth day of November, one thousand eight hundred and sixty-seven, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schudule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

W. T. OTTO,
Acting Secretary of the Interior.

[SEAL.]

J. H. HODGES,
Acting Commissioner of Patents.

Countersigned and sealed with the seal of the Patent Office.

(Here follow 3 diagrams marked page 28.)

29 UNITED STATES PATENT OFFICE.

George Watt, of Richmond, Virginia.—Letters patent No. 71560, dated November 26, 1867; reissue No. 3609, dated August 17, 1869. Improvement in plows.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, George Watt, of Richmond, Henrico County, State of Virginia, have invented a new and useful improvement in plows; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art, to which the above invention appertains, to make and use the same, reference being had to the accompanying drawing, forming part of this specification.

Manuscript

Records

1879

344

Supreme Court U.S.

11th Otto.

1874-260